

STAFF REPORT

To: Southern Shores Planning Board
Date: December 18, 2023
Case: VA-23-02
Prepared By: Wes Haskett, Deputy Town Manager/Planning Director

GENERAL INFORMATION

Applicant: Gerald Soucy
17 Ninth Ave.
Southern Shores, NC 27949

Property Owner: Applicant

Requested Action: Variance from Town Code Section 36-202(d)(4), Minimum Side Yard (Setback) for the property located at 17 Ninth Ave.

PIN #: 986806279625

Location: 17 Ninth Ave.

Zoning: RS-1 Single-Family Residential District

Existing Land Use: “Residential”

Surrounding Land Use & Zoning:

North- Residential; RS-1, Single-Family Residential District

South- Residential; RS-1, Single-Family Residential District

East- Residential; RS-1, Single-Family Residential District

West- Residential; RS-1, Single-Family Residential District

Physical Characteristics: Developed (existing single-family dwelling)

Applicable Regulations: Chapter 36, Zoning Ordinance: Section 36-202(d)(4) and Article XII, Board of Adjustment

ANALYSIS

The applicant is requesting a Variance to seek relief from Town Code Section 36-202(d)(4) to allow an existing 10’ x 16’ shed to remain in a side yard setback. Around June, 2023, the Applicant met on the subject property with Town Staff to discuss alterations and expansion of an existing deck. During the site visit, Town Staff advised the Applicant that a permit should have been obtained for a shed near the deck which could be added to the Applicant’s application for the deck alterations and expansion. Not long after the site visit, the Applicant visited the Planning/Code Enforcement Department to submit his application for the deck work and relocation of the shed (retroactively for the shed) which was most likely inside the rear yard setback.

While discussing potential new locations for the shed with the Applicant, Town Staff found a survey for the property from March, 2005 and recommended placing the shed on the east side of the existing single-family dwelling. The survey appeared to show enough room for the shed so that the side and rear yard setback requirements would be met. Following issuance of a building permit and zoning permit for the deck work and shed, the Applicant moved forward with placing

the shed on the east side of the single-family dwelling. The site plan submitted for the permits showed the shed on the east side of the single-family dwelling between the single-family dwelling and the 15 ft. side yard setback line as discussed with Town Staff. Per a condition of approval, the Applicant obtained and submitted a new as-built survey which showed the shed inside of (encroaching) the 15 ft. side yard setback. The measurements and location of the single-family dwelling on the new as-built survey did not match the measurements and location of the single-family dwelling on the 2005 survey.

The Applicant was then advised by Town Staff that only the Planning Board has the authority to allow the shed to remain in its current location if a Variance is issued. Town Code Section 36-367 of the Town Zoning Ordinance establishes that the Planning Board, when performing the duties of the Town Board of Adjustment, shall vary any of the provisions of the Zoning Ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.
 - Strict application of the ordinance would require the Applicant to relocate the shed a second time.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - The lot is nonconforming with respect to lot size.
 - Many of the lots on Ninth Ave. appear to be nonconforming with respect to lot size.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - Town Staff recommended relocation of the shed to its current location based on the 2005 survey.
- (4) The requested Variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
 - The Applicant relocated the shed in an effort to bring the shed into compliance with all applicable requirements.